IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 62 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAMODKUMAR LALBHAI VAIDYA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 62 of 1996

MR JM BUDDHBHATTI for Petitioner No. 1

MR. A.J. DESAI, LD. APP PROSECUTOR for Respondent No. 1

MR AMIT J SHAH for Respondent No. 2

CORAM : MR.JUSTICE N.G.NANDI

Date of decision: 22/08/2003

ORAL JUDGEMENT

1. This appeal under section 377 of the Criminal Procedure Code is directed against the conviction & sentence by the trial court in Special Case No. 21 of 1993 for the offence under section 7 r/w section 13(1) (d) (ii) and 13 (2) of the Prevention of Corruption Act. Mr. J.M. Bhddhbhatti, learned advocate for the appellant has placed on record copy of the death certificate issued by Vadodara Municipal Corporation suggesting that Promodkumar Lalbhai Vaidya died on 15-5-2001 and his death has been registered on 28-5-2001 with Vadodara Municipal Corporation. Copy of the death certificate is kept on record. It is stated by Mr. Buddhbhatti that the appellant convict has died during pendency of this appeal.

Section 394 deals with abatement of appeal. It provides (1) every appeal under section 377 or section 378 shall finally abated on the death of the accused; (2) Every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant. Proviso suggests that when the appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the pendency of the appeal, any of his near relatives may, within thirty days of the death of the appellant, apply to the Appellate Court for leave to continue the appeal; and if leave is granted, the appeal shall not abate. The explanation appended to the said proviso suggest that "near relative" means a parent, spouse, lineal descendant, brother or sister.

2. In the present case, after the death of appellant convict Promodkumar Lalbhai Vaidya no near relative specified in the explanation as above has applied to this Court for leave to continue the appeal. The result is that, no near relative has come forward within 30 days seeking leave to continue the appeal. In view of the above the appeal abates and dismissed accordingly.

Dt: 22-8-2003 (N.G. Nandi, J)

/vgn